

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUL 28 2011

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SPokane, WASHINGTON

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DUSTIN M. HAUGEN,

Defendant.

CR-06-109-WFN

Plea Agreement

Fed.R.Crim.P. 11(c)(1)(C)

Plaintiff United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and Aine Ahmed, Assistant United States Attorney for the Eastern District of Washington, and the Defendant, DUSTIN HAUGEN, and the Defendant's counsel, Mr. Frank Cikutovich, agree to the following Plea Agreement:

1. Guilty Plea and Maximum Statutory Penalty:

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant, DUSTIN M. HAUGEN, agrees to plead guilty to Count 2 of the Indictment, CR-06-109-WFN, filed on October 17, 2006, which charges the Defendant with Importation of 100 Kilograms or More of Marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 952 and 960. Count 2 is a Class B felony, carrying a maximum statutory penalty of not less than five (5) years nor more than (40) years

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1 imprisonment; a term of supervised release of not less than four (4) years nor more  
2 than life; a fine not to exceed ~~\$1,000,000~~<sup>2</sup>; forfeiture; denial of certain federal  
3 benefits; and a \$100 special penalty assessment.

4 The Defendant, DUSTIN M. HAUGEN, understands that a violation of a  
5 condition of supervised release carries an additional penalty of re-imprisonment  
6 for all or part of the term of supervised release, without credit for time previously  
7 served on post-release supervision.

8 2. Denial of Federal Benefits:

9 The Defendant understands that by entering this plea of guilty he is no  
10 longer eligible for assistance under any state program funded under part A of Title  
11 IV of the Social Security Act (concerning Temporary Assistance for Needy  
12 Families) or benefits under the food stamp program or any state program carried  
13 out under the Food Stamp Act. 21 U.S.C. § 862a. Further, the Court may deny the  
14 Defendant's eligibility to any grant, contract, loan, professional license, or  
15 commercial license provided by an agency of the United States or by appropriated  
16 funds of the United States. 21 U.S.C. § 862.

17 3. The Court is Not a Party to the Agreement:

18 The Court is not a party to this Plea Agreement and may accept or reject this  
19 Plea Agreement. Sentencing is a matter that is solely within the discretion of the  
20 Court. The Defendant understands that the Court is under no obligation to accept  
21 any recommendations made by the United States and/or by the Defendant; that the  
22 Court will obtain an independent report and sentencing recommendation from the  
23 U.S. Probation Office; and that the Court may, in its discretion, impose any  
24 sentence it deems appropriate up to the statutory maximums, notwithstanding the  
25 Rule 11(c)(1)(C) nature of this Plea Agreement.

26 Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant and United States  
27 agree to jointly recommend to the Court a sentencing range of imprisonment of  
28 twelve (12) months to twenty-eight (28) months followed by three (3) years of

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1 supervised release. However, the Defendant acknowledges that no promises of  
2 any type have been made to the Defendant with respect to the sentence the Court  
3 will impose in this matter.

4 The Defendant understands that this Plea Agreement is entered pursuant to  
5 Fed. R. Crim. P. 11(c)(1)(C), and that the United States may withdraw from this  
6 Plea Agreement if the Court imposes a sentence lower than twelve (12) months  
7 followed by three (3) years of supervised release. The Defendant further  
8 understands that the Defendant has the option to withdraw from this Plea  
9 Agreement if the Court imposes a sentence higher than twenty-eight (28) months  
10 followed by three (3) years of supervised release.

11 4. Waiver of Constitutional Rights:

12 The Defendant, DUSTIN M. HAUGEN, understands that by entering this  
13 plea of guilty the Defendant is knowingly and voluntarily waiving certain  
14 constitutional rights, including:

- 15 (a). The right to a jury trial;  
16 (b). The right to see, hear and question the witnesses;  
17 (c). The right to remain silent at trial;  
18 (d). The right to testify at trial; and  
19 (e). The right to compel witnesses to testify.

20 While the Defendant is waiving certain constitutional rights, the Defendant  
21 understands the Defendant retains the right to be assisted through the sentencing  
22 and any direct appeal of the conviction and sentence by an attorney, who will be  
23 appointed at no cost if the Defendant cannot afford to hire an attorney. The  
24 Defendant also acknowledges that any pretrial motions currently pending before  
25 the Court are waived.

26 5. Elements of the Offenses:

27 The United States and the Defendant agree that in order to convict the  
28 Defendant of Importation of More than 100 Kilograms of Marijuana, in violation

1 of 21 U.S.C. §§952 and 960, as charged in Count 2 of the Indictment, CR-06-109-  
2 WFN, the United States would have to prove, beyond a reasonable doubt, the  
3 following elements:

4 First, on or about May 9, 2006, in the Eastern District of Washington,  
5 the defendant knowingly brought at least 100 Kilograms of  
6 Marijuana into the United States from a place outside the  
7 United States, to wit: Canada;

8 Second, the defendant knew the substance he was bringing into the  
9 United States was Marijuana and

10 Third, the substance that the Defendant imported into the United  
11 States was 100 Kilograms or More of Marijuana.

12 6. Factual Basis and Statement of Facts:

13 The United States and the Defendant stipulate and agree that the following  
14 facts are accurate; that the United States could prove these facts beyond a  
15 reasonable doubt at trial; and that these facts constitute an adequate factual basis  
16 for DUSTIN M. HAUGEN's guilty plea. Pertinent facts are set out below in order  
17 to provide a factual basis for the plea and to provide facts which the Government  
18 and Defendant believe are relevant for computing the appropriate guideline range.  
19 This statement of facts does not preclude either party from presenting and arguing,  
20 for sentencing purposes, additional facts which are relevant to the guideline  
21 computation or sentencing, unless otherwise prohibited in this agreement.

22 On May 9, 2006, Customs and Border Protection, Air/Marine officers,  
23 and a Royal Canadian Mounted Police ("RCMP") Officer on board a law  
24 enforcement aircraft observed (videotaped) a Bell 206 Jet Ranger helicopter depart  
25 a hanger in the location near Harrison Hot Springs, British Columbia, Canada.  
26 The helicopter pilot was identified as Daryl Gilles Desjardins. The co-pilot was  
27 identified as the Defendant, Dustin HAUGEN ("HAUGEN"). The helicopter was  
28 observed landing at an isolated area in Canada and meeting with occupants of a

1 pick-up truck where black hockey bags were observed being unloaded from the  
2 pick up truck and loaded into the helicopter. HAUGEN was observed loading the  
3 hockey bags into the helicopter. The helicopter then took off and flew into the  
4 United States under continual surveillance to a location north of Conconully,  
5 Washington, within Okanogan County.

6 The helicopter landed near another pick-up truck and black hockey bags  
7 were observed being unloaded from the helicopter and placed into the rear of the  
8 pick-up truck inside a canopy attached to the truck. HAUGEN was observed  
9 loading the hockey bags into the truck. The other individual loading the marijuana  
10 into the truck was Henry Patrick Roman, who was the driver of the truck.  
11 Surveillance was maintained on the helicopter after it took-off, and it was  
12 eventually seen (videotaped) landing back in Canada, from the same location  
13 where it had taken off (Harrison Hot Springs, BC).

14 The marijuana was weighed without packaging, and weighed 135.2  
15 kilograms. The DEA Laboratory confirmed that the substance was marijuana.  
16 The Defendant admits that he acted as a pilot with Daryl Gilles Desjardins, and  
17 that he knowingly brought marijuana from Canada into the United States.

18 7. Waiver of Inadmissibility of Statements:

19 The Defendant agrees to waive the inadmissibility of statements made in the  
20 course of plea discussions with the United States, pursuant to Fed. R. Crim.  
21 P. 11(f). This waiver shall apply if the Defendant withdraws this guilty plea or  
22 breaches this Plea Agreement. The Defendant acknowledges that any statements  
23 made by the Defendant to law enforcement agents in the course of plea discussions  
24 in this case would be admissible against the Defendant in the United States' case-  
25 in-chief if the Defendant was to withdraw from this plea of guilty or to breach this  
26 Plea Agreement.

1       8.     The United States Agrees:

2             (a.)   Not to File Additional Charges:

3       The United States Attorney's Office for the Eastern District of Washington  
4 agrees not to bring any additional charges against the Defendant based upon  
5 information in its possession at the time of this Plea Agreement, and arising out of  
6 the Defendant's conduct involving illegal activity charged in this Indictment;  
7 unless the Defendant breaches this Plea Agreement any time before or after  
8 sentencing.

9             (b.)   Dismissal of Count 1:

10       The United States agrees to move that the Court dismiss Count 1, which  
11 charges the Defendant with Possession with the Intent to Distribute 100 Kilograms  
12 or More of Marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(b)(vii).

13       9.     United States Sentencing Guideline Calculations:

14       The Defendant understands and acknowledges that the United States  
15 Sentencing Guidelines (hereinafter "U.S.S.G.") are applicable to this case and that  
16 the Court will determine the Defendant's applicable sentencing guideline range at  
17 the time of sentencing.

18             (a.)   Base Offense Level:

19       The United States contends that the base offense level for Count 2 of the  
20 Indictment is twenty-six (26). See U.S.S.G. § 2D1.1(c)((7)).

21             (b.)   Specific Offense Characteristics:

22       The United States contends that two (2) offense levels should be added  
23 because the Defendant used an aircraft to bring the Marijuana into the United  
24 States from Canada, which was not a commercial scheduled air carrier. U.S.S.G. §  
25 2D1.1(b)(3). The Defendant has provided a truthful and complete recitation of his  
26 criminal activities prior to sentencing, and so the Defendant may be eligible for  
27 safety valve consideration. If the Court finds that he qualifies for safety valve,  
28

1 then the Defendant would receive a two (2) offense level decrease. *See* U.S.S.G.  
2 §§ 5C1.2 and 2D1.1((b)(11)).

3 (c.) Acceptance of Responsibility:

4 If the Defendant pleads guilty and demonstrates a recognition and an  
5 affirmative acceptance of personal responsibility for the criminal conduct;  
6 provides complete and accurate information during the sentencing process; does  
7 not commit any obstructive conduct; accepts this Plea Agreement; and enters a  
8 plea of guilty no later than July 30, 2011, the United States will recommend that  
9 the Defendant receive a two (2)-level downward adjustment for acceptance of  
10 responsibility, and the United States will move for a one (1)-level downward  
11 adjustment in the Defendant's offense level for timely entering a plea of guilty,  
12 pursuant to U.S.S.G. § 3E1.1(a) and (b).

13 The Defendant and the United States agree that the United States may at its  
14 option and upon written notice to the Defendant, not recommend a three (3)-level  
15 downward reduction for acceptance of responsibility if, prior to the imposition of  
16 sentence, the Defendant is charged or convicted of any criminal offense  
17 whatsoever or if the Defendant tests positive for any controlled substance.

18 Furthermore, the Defendant agrees to pay the \$100 mandatory special  
19 penalty assessment to the Clerk of Court for the Eastern District of Washington, at  
20 or before sentencing, and shall provide a receipt from the Clerk to the United  
21 States before sentencing as proof of this payment, as a condition to this  
22 recommendation by the United States.

23 (d.) Final Offense Level:

24 If the Court finds the Defendant safety valve qualified, then the Defendant's  
25 final offense level would be twenty-one <sup>three</sup> (21). Otherwise, if he is found not be  
26 safety valve qualified, the Defendant's final offense level would be twenty-three  
27 (23).  
28



1           10. Criminal History:

2           The United States and the Defendant understand that the Defendant's  
3 criminal history computation will be determined by the Court. The United States  
4 and the Defendant have made no agreement and make no representations as to the  
5 criminal history category.

6           11. Incarceration:

7           The United States and Defendant agree, pursuant to Fed.R.Crim.P.  
8 11(c)(1)(C), to jointly recommend a sentencing range of between 12 months and  
9 twenty-eight (28) months incarceration. The Defendant understands that at the  
10 time of this Plea Agreement, the United States intends to request a sentence of  
11 incarceration of twenty-eight (28) months, but this may be altered based on  
12 possible downward departures at the request of the United States. The Defendant  
13 understands and acknowledges that no promises or insinuations have been made as  
14 to whether the United States will request a downward departure.

15           12. Supervised Release:

16           The United States and Defendant agree, pursuant to Fed.R.Crim.P.  
17 11(c)(1)(C), to jointly recommend that the Court impose a four (4) year term of  
18 supervised release.

19           13. Criminal Fine:

20           The United States and the Defendant are free to make whatever  
21 recommendation concerning the imposition of a criminal fine that they believe is  
22 appropriate.

23           14. Removal/Deportation:

24           The Defendant understands that he has no lawful immigration status to  
25 reside in the United States. Consequently, he will be removed/deported once he  
26 completes his term of incarceration. The Defendant acknowledges that he has  
27 been advised by his attorney that as a consequence of pleading guilty, he may  
28 forever be barred from obtaining lawful immigration status within the United  
States.



1           15. Mandatory Special Penalty Assessment:

2           The Defendant agrees to pay the \$100 mandatory special penalty assessment  
3 to the Clerk of Court for the Eastern District of Washington, at or before  
4 sentencing, pursuant to 18 U.S.C. § 3013, and shall provide a receipt from the  
5 Clerk to the United States before sentencing as proof of this payment.


6           16. Payments While Incarcerated:

7           If the Defendant lacks the financial resources to pay the monetary  
8 obligations imposed by the Court, the Defendant agrees to earn the money to pay  
9 toward these obligations by participating in the Bureau of Prisons' Inmate  
10 Financial Responsibility Program.

11           17. Additional Violations of Law Can Void Plea Agreement:

12           The Defendant and the United States agree that the United States may at its  
13 option and upon written notice to the Defendant, withdraw from this Plea  
14 Agreement or modify its recommendation for sentence if, prior to the imposition  
15 of sentence, the Defendant is charged or convicted of any criminal offense  
16 whatsoever or if the Defendant tests positive for any controlled substance.

17           18. Conditional Waiver of Appeal Rights:

18           In return for the concessions that the United States has made in this Plea  
19 Agreement, the Defendant agrees to waive his right to appeal his conviction or  
20 sentence if the Court imposes a period of incarceration no longer than twenty-  
21 eight (28) months, imposes a term of supervised release of no longer than <sup>four</sup> ~~three~~ (3)   
22 years, forfeiture, and imposes a special penalty assessment of \$100. The  
23 Defendant further expressly waives his right to file any post-conviction motion  
24 attacking his conviction and sentence, including a motion pursuant to 28 U.S.C. §  
25 2255, except one based upon ineffective assistance of counsel based on  
26 information not now known by the Defendant and which, in the exercise of due  
27 diligence, could not be known by the Defendant by the time the Court imposes the  
28 sentence.

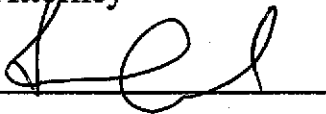
19. Integration Clause:

The United States and the Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state or local authorities. The United States and the Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

Michael C. Ormsby  
United States Attorney

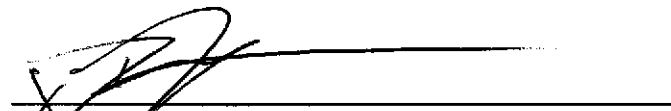


7/28/11

Aine Ahmed  
Assistant U.S. Attorney

Date

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement, and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.



Dustin M. Haugen  
Defendant

7/28/11

Date

1 I have read the Plea Agreement and have discussed the contents of the  
2 agreement with my client. The Plea Agreement accurately and completely sets  
3 forth the entirety of the agreement between the parties. I concur in my client's  
4 decision to plead guilty as set forth in the Plea Agreement. There is no legal  
5 reason why the Court should not accept the Defendant's plea of guilty.

6   
7 \_\_\_\_\_  
8 Mr. Frank Cikutovich  
9 Attorney for the Defendant

7-28-11  
\_\_\_\_\_  
Date